

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 8 1998

PATRICK FISHER
Clerk

MADYUN ABDULHASEEB,

Petitioner-Appellant,

v.

STEVE HARGETT,

Respondent-Appellee.

No. 97-6412

(D.C. No. 96-CV-379)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BALDOCK, EBEL, and MURPHY**, Circuit Judges.**

Petitioner Madyun Abdulhaseeb seeks a certificate of appealability to appeal the district court's order denying his Motion for Relief of Judgment. In his motion, Petitioner sought relief from the district court's prior decision dismissing his 28 U.S.C. § 2254 motion for abuse of the writ. Because we conclude Petitioner has not made a substantial

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

showing of the denial of a constitutional right, we deny his request for a certificate of appealability and dismiss the appeal. 28 U.S.C. § 2253(c)(2).

Petitioner is an inmate at the Lexington Correctional Complex in Lexington, Oklahoma. On September 25, 1997, Petitioner filed a “Motion for Relief from Judgment” seeking to vacate a judgment entered against him on September 27, 1996. As grounds for his motion, Petitioner alleged that the district court dismissed his 28 U.S.C. § 2254 motion “in a manner inconsistent with due process [because he] was denied notice, the opportunity to be heard, and the opportunity to reply.” On appeal, he requests, among other things, that we reverse the district court’s decision and remand the case to allow Respondent to file a response to which Petitioner may reply.¹

We have reviewed Petitioner’s application for a certificate of appealability, his brief, the district court’s order, and the entire record before us. We conclude that Petitioner’s appeal is meritless and that he has not demonstrated that the district court’s disposition of his “Motion for Relief from Judgment” is debatable or reasonably subject to a different outcome on appeal. See Barefoot v. Estelle, 463 U.S. 880, 893 & n. 4 (1983) (substantial showing of denial of constitutional right shown by demonstrating that: 1) issues raised are debatable among jurists, (2) an appellate court could resolve issues differently, or (3) the questions deserve further proceedings.). Indeed, the exact § 2254

¹ On January 12, 1998, Petitioner filed a “Motion to Dismiss Allegation of Error Concerning Jury Instruction in Original Complaint.” We deny Petitioner’s motion.

motion which Petitioner ultimately seeks to revisit has been reviewed and decided adversely to him by this court. See Madyun Abdulhaseeb v. Steve Hargett, 1997 WL 196689 (10th Cir. 1997). Accordingly, we DENY Petitioner's motion for a certificate of appealability and DISMISS his appeal.

Entered for the Court,

Bobby R. Baldock
Circuit Judge